IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 19303 of 2007(W)

PETITIONER:

ESSAR TOWER INFRASTRUCTURE (P) LTD.,
41/256, C-19, SECOND FLOOR, MATHER SQUARE,
OPP.NORTH RAILWAY STATION, COCHIN-682018.
REPRESENTED BY EXECUTIVE (SITE ACQUISITIONS AND
ADMINISTRATION), MR.RAHUL DAS.

BY ADV. SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN

RESPONDENTS:

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1. KODUR GRAMA PANCHAYAT, KODUR P.O.,
PIN-676 504 REPRESENTED BY ITS SECRETARY.

2. THE PANCHAYAT COMMITTEE, KODUR GRAMA
PANCHAYAT, KODUR P.O., PIN-676 504
REPRESENTED BY ITS PRESIDENT.

BY ADV. SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ
SRI.M.RISHIKESH SHENOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	PHOTOCOPY OF THE ORDER DTD. 28-4-07 ISSUED BY THE RESPONDENT.
EXT.P2	TRUE COPY OF THE JUDGMENT IN W.PC.NO.14805/07
EXT.P3	PHOTOCOPY OF THE LETTER DTD. 8-6-07 ISSUED BY THE RESPONDENT TO THE PETITIONER.
EXT.P4	PHOTOCOPY OF THE LETTER DTD. 15-6-07 ISSUED BY THE RESPONDENT TO THE PANCHAYAT
EXT.P5	PHOTOCOPY OF THE PANCHAYAT COMMITTEE DECISION DTD. 31-5-07
EXT.P6	PHOTOCOPY OF THE JUDGMENT IN W.P.C.NO.179/06

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(C).No. 19303 OF 2007

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Dated this the 13th day of July, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner has set up nearly 100 Mobile Telecommunication towers at various places through out the State of Kerala. Petitioner submitted an application for issuance of a building permit for putting up a Telecommunication tower before the respondent-Panchayat. By Ext.P1, the application was rejected. Petitioner approached this court and by Ext.P2, this court quashed Ext.P1 and directed the matter to be re-considered. While doing so, learned Single Judge of this court followed the judgment of this court reported in **Infocomm v. Chemancherry Grama Panchayat** (2006(4)KLT 695) and also Ext.P6 judgment and directed the Panchayat to re-consider the application made by the petitioner in the light of the decisions referred to above and the statutory provisions governing the same. Ext.P5 is the decision taken by the Panchayat Committee. Ext.P4 is the

communication addressed to the petitioner intimating the decision of the Panchayat Committee. By Ext.P5 the Panchayat Committee has stated that on account of the fear among the people in the locality there will be loss to life and property, it was decided not to grant permission.

2. Counter affidavit is filed stating interalia that the Panchayat has got various duties and obligations under the Kerala Panchayat Raj Act and upkeep of environmental hygiene is one of such mandatory functions to be discharged by the Panchayat. The Act has given considerable powers to the Panchayat to enable them to function as institutions of Local Self Government. There is a reference to contempt action initiated by the petitioner and also the correction in the mistake and issuance of Ext.P4. It is also pointed out that the petitioner has an alternate remedy. Respondent has also stated that the judgment of the Division Bench is wrong. It is also sated that studies conducted by various European countries revealed increased risk of brain tumour due to radiation from mobile phone base stations. The studies also revealed DNA damage resulting in increased cancer risk, infertility and embryonic damage caused

by the harmful radiations from the mobile phone base stations. It is stated that the directions of the learned Single Judge in Ext.P2 are violative of Article 21 of the Constitution.

3. I heard learned counsel for the parties who reiterated their stands as reflected in the pleadings. It is not in dispute that Ext.P2 judgment has now confirmed by the Division Bench in W.A.No.1596/07. The Division Bench held as follows:

> "The facts are not in dispute. Petitioner had gone before the Panchayat for grant of permission to erect a mobile phone tower. Permission is rejected solely on the ground that the local inhabitants have got a strong objection in granting such a permission. This Court in the aforesaid decisions has observed that the objection raised by the residents of the locality is irrelevant while considering the application for grant of permission for erection of a mobile phone tower.
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> Since the learned Single Judge has followed the decisions of this Court which have become final, in our opinion, the learned Judge has not committed any error whatsoever which would call for our interference. Therefore, the writ appeal requires to be rejected and it is rejected. Ordered accordingly."

4. Ext.P2 judgment has now become final. Ext.P2

judgment directed the Panchayat to re-consider the matter in the light of the Division Bench and also Ext.P6 judgment. It is clear that the respondent- Panchayat has proceeded on the same lines as it did in Ext.P1 namely it is proceeded to decide the matter on the basis of the agitation of the people. It appears that the reasons stated in Ext.P5 is substantially a duplication of what is stated in Ext.P1. There is no case for the respondent Panchayat that the licence sought for by the petitioner cannot be granted except for reasons stated in Ext.P5. Ext.P5 and P6 cannot be sustained and there will be a direction to the respondents to take up the application of the petitioners and pass orders thereon as was directed in Ext.P2 judgment which was confirmed in W.A.No.1596/07. It is made clear that the application sought for by the petitioner shall not be rejected citing the reasons which have been mentioned in Ext.P5. A decision will be taken as aforesaid, within a period of three weeks from the date of receipt of a copy of this judgment.

(K.M.JOSEPH, JUDGE)

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